

STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE



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September 21, 2009

VIA U.S. MAIL AND E-MAIL

The Honorable Craig Hinchman
LaPorte County Auditor
813 Lincolnway, Suite 203
LaPorte, IN 46350
chinchman@laportecounty.org

Re: Your September 14, 2009 letter regarding the Department

Sir:

The Department has been forwarded a copy of your September 14, 2009 letter that was apparently distributed to local officials and taxing units of LaPorte County. (September 14, 2009 letter from Craig Hinchman to unidentified recipients, a copy of which is attached hereto as *Exhibit A*.) Through an oversight that the Department presumes was unintentional, a courtesy copy of your letter was not received from your office by the Department. This is unfortunate inasmuch as had the Department been given advance notice of your letter, several misstatements of fact could have been avoided.

The Department has worked extensively for two years to promote the accuracy and equity of assessments in LaPorte County and to assist the local units and taxpayers in restoring the county to on-time tax billing. This work included an exhaustive and lengthy investigation into LaPorte County assessments and a subsequent re-trending order. (It also includes two recent hearings and annual adjustment orders for 2008 pay 2009 and 2009 pay 2010.) The Department has always wanted nothing less than for LaPorte County to move forward with its pay-2007 tax bills, and now that you have publicly said that you share our goal, one of the final hurdles to its achievement has been surmounted. The Department is therefore encouraged that you, as stated in your most recent letter, recognize the value of cooperation. In that spirit of cooperation, the Department offers the following corrections on certain points regarding LaPorte County's pay-2007 tax bills that appear to still be a matter of confusion. This is similar to the correction that the Department had to issue earlier regarding your inaccurate assertions about the use of a 25% trending multiplier for the County's 2005 gross assessed value. (Craig Hinchman, "Reassessment Certification," a copy of which is attached hereto as *Exhibit B*.) The Department did not know where you obtained this false information. Nevertheless, everyone can agree that you did not

obtain it from the Department, because in a telephone conversation followed by a letter sent June 11, 2009, I informed you that the rumor about the use of a 25% multiplier for the 2005 values "was absolutely, unequivocally false." (June 11, 2009 letter from the Department to Hinchman, a copy of which is attached hereto as *Exhibit C.*)

The Department does accept your admission in your September 14, 2009 letter that you unilaterally certified the un-trended property values from 2005 for the pay-2007 tax bills. This was an unprecedented act by a county auditor, and the Department thinks it only fair to you that the record reflect why you made a decision of this magnitude and originality. The County Assessor, on April 14, 2009, certified trended 2006 values to you for the pay-2007 bills, but the threat of taxpayer lawsuits caused you to rethink using the Assessor's certified values. (July 16, 2009 letter from Chris Willoughby to the Department, a copy of which is attached hereto as *Exhibit D.*) Instead, you opted to use the un-trended 2005 values, making you the first county auditor to ever take such an action.

Your action was not taken lightly, as you were undoubtedly aware of the drastic consequences that would flow from certifying the 2005 values instead of the 2006 values. Indeed, the Department had made it abundantly clear to you that the tax rates for the cross-county districts could not possibly be based on the 2005 assessed values you certified on July 24, 2009, and offered you the opportunity to recertify 2006 assessed values. (August 14, 2009 e-mail from Craig Hinchman to the Department; and 1782 Notice, copies of all of which are attached hereto as *Group Exhibit E*; August 20, 2009 letter from the Department to Craig Hinchman; August 25, 2009 e-mail from Jeff Volz to Craig Hinchman et al., copies of all of which are attached hereto as *Group Exhibit F.*) I know that we have explained to you before—and that you are well aware of—the consequences to the cross-county units of your certification. Nevertheless, it bears repeating one more time.

Two years ago, the counties of Porter, St. Joseph, and Marshall certified their 2006 assessed values for their pay-2007 tax bills. Today LaPorte is still waiting to re-issue its pay-2007 tax bills. There are cross-county units whose boundaries fall within two or more counties, including LaPorte. For example, there is an individual school corporation whose taxing jurisdiction includes LaPorte County taxpayers and St. Joseph County taxpayers. The St. Joseph County taxpayers have already been billed for their portion of the school corporation's pay-2007 taxes. The St. Joseph taxpayers were billed for their 2007 school corporation tax bills based on tax rates derived from the original 2006 valuations.

The Department told you and your attorney repeatedly—in writing—that school corporations would, in the immediate future, be ineligible for shortfall appeals because of a change in the law that had taken place in 2008 in which the State assumed total responsibility for school general funds. The Department told you and your attorney that any taxing units that would be eligible for shortfall appeals could not collect for the shortfall except as part of the 2010 budget year. (August 27, 2009 1:00 p.m. e-mail from Brian Bailey to Chris Willoughby; August 27, 2009 2:02 p.m. e-mail from Brian Bailey to Craig Hinchman; August 27, 2009 3:00 p.m. e-mail from Brian Bailey to Chris Willoughby; August 27, 2009 3:55 p.m. e-mail from Brian Bailey to Chris

Willoughby, copies of all of which are attached hereto as *Group Exhibit G.*) You were “fully informed” by your attorney about the schools’ present ineligibility for shortfall appeals and, for eligible entities, the disbursement of funds after a successful appeal would be part of the 2010 budget year. (August 27, 2009 4:06 p.m. e-mail from Chris Willoughby to Brian Bailey, a copy of which is attached hereto as *Exhibit H.*) You admitted that you knew that your decision would cause a “shortfall,” but decided to “stay with the values [you] certified for the year 2005 pay 2006 on July 24, 2009.” (August 27, 2009 e-mail from Craig Hinchman to the Department, a copy of which is attached hereto as *Exhibit I.*)

In August 2009, you did recommend that Porter, St. Joseph, and Marshall Counties re-open, collect, and settle 2006-pay-2007 tax bills (two years after the fact) to accommodate your certification of the 2005 values. (*See Exhibit F.*) Understandably, those counties were not interested in incurring the cost, undertaking the effort, and stirring up massive taxpayer confusion and backlash to reopen two-year-old tax bills. (August 17, 2009 e-mail from Peter Mullen to Jeff Volz; August 17, 2009 e-mail from James Kopp to Jeff Volz; August 17, 2009 e-mail from Penny Lukenbill to Jeff Volz, copies of all of which are attached hereto as *Group Exhibit J.*) Nor was the Auditor of State’s office willing to upend tax bills that had been final for two years in three counties. (August 17, 2009 e-mail from Dan Bastin to Jeff Volz, a copy of which is attached hereto as *Exhibit K.*)

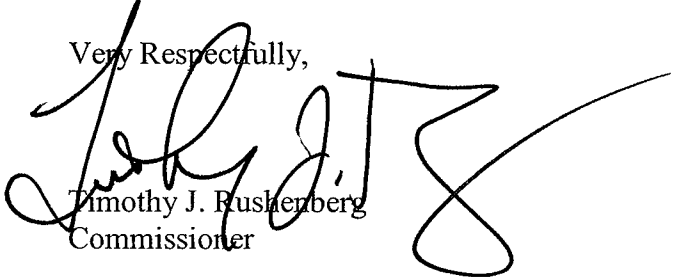
While it is commendable that you thought long and hard about taking the unprecedented action of certifying 2005 values for the pay-2007 tax bills, allowing three months to pass before you actually certified the 2005 values to the Department on July 24, 2009, was, you must admit, excessive. (July 24, 2009 e-mail from Lisa Parrett-Hock to Jeff Volz, a copy of which is attached hereto as *Exhibit L.*) In fact, the delay in certification not only put LaPorte County at greater fiscal risk (the treasuries of local units were depleting to disastrously low levels), but it put you at risk of being charged with criminal negligence in the performance of the duties of your office. To your credit, once the Department pointed out to you that the prosecutor could charge you with a crime were you to delay certification any longer, you certified net assessed values.

Although you initially doubted whether you were doing the right thing (your attorney acknowledged your “repeated changes in position regarding what values will be certified” (July 24, 2009 e-mail from Chris Willoughby to Hinchman et al. a copy of which is attached hereto as *Exhibit M.*)), at the end of your three-month deliberation, you were firmly convinced of the wisdom of your action. Indeed, no auditor with less than a firm conviction would have taken your unprecedented step—against the advice of counsel—of launching yourself and LaPorte County into these uncharted legal waters. (*See Exhibit M.*) True, the Department has never shared your strong conviction on certifying the 2005 values, but in the interest of bringing finality to tax bills that should have been final two years ago, we have yielded to your considered judgment. You deserve to take full responsibility for your actions in this matter. The Department cannot, in good conscience, claim responsibility for any of the actions that you have taken.

The Honorable Craig Hinchman
September 21, 2009
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Again, we are pleased to hear you call for cooperation as we move to the final stages of this difficult process, and look forward to receiving your cooperation.

Very Respectfully,

A large, stylized handwritten signature in black ink, likely belonging to Timothy J. Rushenberg, is written over the typed name and title.

Timothy J. Rushenberg
Commissioner

cc: The Honorable Jim Arnold
The Honorable Ed Charbonneau
The Honorable Nancy Dembowski
The Honorable Tom Dermody
The Honorable Scott Pelath
All taxing units in LaPorte County
County Commissioners
County Council